IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 2750 of 2006()

CRRP.61/2003 of ADDL. SESSIONS COURT, MANJERI
CC.81/2002 of CHIEF JUDICIAL MAGISTRATE COURT, MANJERI
(CMP.727/2003)

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REVN. PETITIONER:

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1. BINU @ BABU, S/O.RAMANKUTTY NAIR,
KOTTAYIL ATHIKKATTIL HOUSE, KARUVAMBRAM,
MANJERI.

2. SUNIL KUMAR, S/O.KANNAN NAIR,
KUTHODIYIL HOUSE, PULIYAKKODE, AKKAPARAMBU P.O.,
KUZHIMANNA VIA, ERNAD TALUK.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI
SRI.M.V.HARIDAS MENON

RESPONDENTS: REVISION PETITIONER & STATE/CW3

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1. PUSHPA.K., W/O.HARIDASAN,
VADAKKEKANDY HOUSE, AKKAPARAMBU P.O.,
KUZHIMANNA VIA, ERNAD TALUK.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.O.V.MANIPRASAD
PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2750 OF 2006 C

Dated this the 8th day of August, 2007

O R D E R

The revision petitioners, who are accused Nos.6 and 7 in C.C.No.81/2002 on the file of the CJM Court, Manjeri for offences punishable under sections 143, 147, 148, 452, 323 and 324 read with section 149 IPC, challenge the revisional order dated 27.6.06 passed by the Additional Sessions Court, Manjeri in Crl.R.P. No.61/2003 setting aside the order dated 29.10.2003 passed by the CJM, Manjeri allowing the petition (CMP No.727/03) filed by the Deputy Director of Prosecution and Assistant Public Prosecutor seeking withdrawal of the case under section 321 Cr.P.C.

2. The case of the prosecution in the above case is that the nine accused persons, in furtherance of their common object, at about 9.30 p.m. on 19.8.01 formed themselves into an unlawful assembly armed with deadly weapons and criminally trespassd into the house of the de facto complainant CW1 and caused hurt to the de facto complainant and others and outraged the modesty of Pushpa, the wife of the de facto complainant and CW4, another

female member of the family.

3. At a stage after the framing of the court charge, the Assistant Public Prosecutor in charge of the case filed a petition (CMP.727/2003) under section 321 Cr.P.C. before the court below on 26.2.2003. After referring to the case of the prosecution, the said petition proceeded to state as follows:-

> *" Now the Government have examined the subject matter of the above case and expressed no objection to withdraw the case from the file of this Hon'ble court. All the accused and the injured are neighbours and that the alleged incident is occurred under some misconception. Due to the inexpediency of prosecution for the reason of the State and to extinguish the rivalry between the parties and thereby to maintain peace and harmony in the locality, it is not expedient to continue with the prosecution. Therefore, it is humbly prayed that this Hon'ble court may be pleased to grant permission to withdraw the case from the file of this court."*

4. On 29.10.03, the learned CJM allowed the petition granting permission to withdraw the prosecution. The said order was challenged by Pushpa, the wife of the de facto complainant by filing a revision before the Sessions Court, Kozhikode as

Crl.R.P.No.61/03. The learned Additional Sessions Judge, as per the impugned order dated 27.6.06, allowed the revision setting aside the order passed by the trial court and has directed the continuance of C.C.No.81/02 with a further direction to proceed with the trial of the case in accordance with law and to dispose of the same within three months. It is the said order which is assailed in this revision.

5. The learned counsel appearing for the 1st respondent who was the revision petitioner before the court below made the following submissions in support of the revisional order:-

The main criteria for withdrawal of a prosecution under section 321 Cr.P.C. are the following:-

(1) Whether the Public Prosecutor in charge of the case has applied his mind to the facts and relevant materials.

(2) Whether the decision to withdraw the prosecution taken by the Public Prosecutor was a bona fide one and made in good faith.

(3) Whether the decision to withdraw the prosecution was given under dictation from the Government or any other superior authority or on other extraneous considerations.

(4) Whether the decision to withdraw the prosecution was one taken in public interest and not with a view to stifle a legitimate prosecution.

The revision petitioners also rely on the decisions in ***Abdul Karim Vs. State of Karnataka*** [AIR 2001 SC 116], ***Rahul Agarwal Vs. Rakesh Jain*** [AIR 2005 SC 910], ***S.K.Shukla and others Vs. State of U.P. and others*** [AIR 2006 SC 413], ***Sheo Nandan Paswan Vs. State of Bihar*** [AIR 1987 SC 877], ***Rajender Kumar Vs. State*** [AIR 1980 SC 1510], ***Prakash Babu Vs. State of*** Kerala [2004 (2) KLT 908] and ***K.Chandran Vs. State of Kerala*** [ILR 2003 (1) Kerala 44].

6. There cannot be any quarrel regarding the propositions laid down in the above decisions. The real issue is as to whether on the facts and circumstances of the case, this was a fit case where the Prosecutor in charge of the case should have been permitted to withdraw the prosecution. It would appear as though the learned Additional Sessions Judge who was virtually sitting in appeal over the decision of the trial court which had taken into consideration some of the relevant aspects of the matter. One of the blames made by the revisional court on the Public Prosecutor

was that the petition filed by him did not show that he had independently applied his mind to the relevant materials and reached his own satisfaction in good faith regarding the need for withdrawal from prosecution on the basis of the decision of the Government. It is not disputed that the Government had expressed no objection to the withdrawal of the prosecution. Even in a case where the Government has expressed their no objection in the withdrawal of a prosecution, that cannot be the last word. The Public Prosecutor in charge of the case has to independently apply his mind to the relevant materials and reach his own satisfaction regarding the need for withdrawal from the prosecution and his request also should have been made in good faith. Merely because there is rancor and acrimony between the disputing parties, it does not follow that there cannot be any withdrawal of the prosecution if the same will bring about peace and harmony and if the occurrence also involves only a few individuals, or relatives or neighbours and does not affect a larger cross section of the society. The non-production of the Government Order along with the petition was one criticism made by the court below. The law does not require the production of the Government Order in a

prosecution of this nature. Production of a Government Order is insisted only in the four class of cases enumerated under the proviso to section 321 Cr.P.C. and that too in a case where the Prosecutor in charge of the case has been permitted by the Central Government to move the court. In such a case, the court is required to direct the Public Prosecutor to produce before it the permission granted by the Central Government to withdraw from the prosecution. No such direction is envisaged in a case where the State Government has accorded permission to the Public Prosecutor in charge of the case to withdraw from the prosecution. While the moving of an application for permission to withdraw from the prosecution may be an executive function, granting sanction in that regard is a judicial function which has to be in accordance with the public interest involved. As observed by the Apex court in ***Rahul Agarwal Vs. Rakesh Jain*** [AIR 2005 SC 910], one relevant consideration for according permission to withdraw from prosecution may be that the court thereby lends a helping hand in bringing about peace and harmony between the parties.

7. Eventhough the revisional court can by virtue of section 401(1) Cr.P.C., in its discretion, exercise the power of an

appellate court, as the section itself indicates it is a discretionary power which is hedged in by certain restrictions provided in the subsequent clauses of the said section. The observation by the Sessions court that absolutely no peaceful or social harmony was existing between the parties and that the parties are still living in rivalry was not founded on any proved circumstances and was not strictly justified since the trial of the case is yet to begin. Merely because the request for withdrawal from the prosecution is opposed by the de facto complainant or his near relatives, it cannot be concluded that the strife and rancor between the parties exists unabashedly. Even if there are no signs of the dispute between the parties coming to an end due their acrimonious disposition, the court may, nevertheless in a given case withdraw from the prosecution in public interest if by that process peace and harmony could be restored between the parties. The application under section 321 Cr.PC. can be disposed of only after taking into account the entire conspectus of the matter including the possible impact of an order under section 321 Cr.P.C. If the court has reason to believe that the request made by the Public Prosecutor is founded on ulterior motives or that he is taking a manifestly

partisan attitude or that he is not fair and reasonable, the court can very well refuse the permission. The Additional Sessions court in the fitness of things should have left it to the trial court to exercise the discretion after considering the pros and cons in the matter and in the light of the guidelines and tests laid down by the apex court and this court. The impugned order dated 27.6.06 passed by the Additional Sessions Court, Manjeri is accordingly set aside and the matter will stand remitted to the CJM, Manjeri, who shall consider and dispose of CMP.No.721/03 in the light of the principles gatherable from the rulings on the point and in the light of the above observations.

This revision is allowed as above.

(V. RAMKUMAR, JUDGE)

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